

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

MARCH 3, 2008

KENDALL-DEAN SCHOOL

7:00 P.M.

The meeting began at 7:00 P.M. with the prayer and the pledge to the flag. Council members present were Mr. Keeley, Mr. Leclerc, Mr. Lovett, Mr. Zwolenski and Mrs. Thibault. Town Administrator Lowe and Town Solicitor Hadden were also present.

EXECUTIVE SESSION

MOTION by Mr. Leclerc, seconded by Mr. Lovett, and voted unanimously on an aye vote to move this to the end of the meeting.

RESOLUTION RE: COALITION OF COMMUNITIES IMPROVING RHODE ISLAND

MOTION by Mr. Lovett, seconded by Mr. Keeley, and voted unanimously on a roll call vote to approve the following resolution:
“BE IT RESOLVED BY THE TOWN COUNCIL AS FOLLOWS:
WHEREAS: The Mayors, Administrators and top executives of many of the State’s cities and towns have been working since January, 2007 to address many issues common to all members of The Coalition of Communities Improving Rhode Island; and **WHEREAS:** The members of the Coalition are being faced with unprecedented economic hardships as a result of recent proposals made by the Executive branch of State government; and **WHEREAS:** The Town Council is unanimously in support of the efforts of Town

Administrator Robert B. Lowe and the other Coalition members.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NORTH SMITHFIELD AS FOLLOWS:-- SECTION 1:

The Town Council of the Town of North Smithfield authorizes Robert B. Lowe to continue his effort along with the heads of the other Coalition communities to accomplish the following:

- a. Request that the General Assembly not approve the reduction in state aid to cities and towns for the fiscal year 2008-2009 as said reduction totals 13% of the State's \$150 million shortfall.**
- b. Request that the General Assembly enact legislation to make any and all binding arbitration awards and school contracts subject to the provisions of State and local property tax cap legislation.**
- c. Request State legislation to enable cities and towns to decide at a local level whether or not to comply with any unfunded State mandates.**
- d. Request State legislation to require any and all local fire**

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districts to comply with the provisions of State and local property tax cap legislation.

SECTION 2: The Town Council further authorizes Town Administrator Robert B. Lowe to continue his efforts along with the efforts of the top executives of the other Coalition communities, toward regionalization of health insurance and the consolidation of municipal and school services.

SECTION 3. The Town Council further enthusiastically supports the position of the Chairman of the Board of Regents, the Honorable Robert G. Flanders, Jr., to alleviate the State's chronic over-reliance on local property taxes to fund

education by implementing the following: a. For the next four (4) years the State should devote education aid to cover state or federally mandated local expenditures and gradually take over full responsibility for funding these items. b. Move toward full State funding of expenses such as out of district transportation, group home costs, extraordinary special education expenses and cost of health care contract. c. Increase State aid to education over the next four (4) years at the rate of three percent (3%) per year. SECTION 4: The town council of North Smithfield directs that a copy of this Resolution be sent to its Senators and Representatives including Senator Paul W. Fogarty, Senator Marc A. Cote, Senator John J. Tassoni, Jr., Representative Raymond C. Church, Speaker of the House William J. Murphy, President of the Senate Joseph A. Montalbano, and Governor Donald L. Carcieri and that these officials be urged to support these Coalition goals. SECTION 5: THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS PASSAGE BY THE NORTH SMITHFIELD TOWN COUNCIL.”

HIRING OF ATTORNEY P. DOUGHERTY FOR NARRAGANSETT IMPROVEMENT LITIGATION

As Assistant Town Solicitor, Mr. Rossi provides legal advice to both the Planning Board and the Zoning Board. Recently the Planning Board denied the Master Plan application for Rankin Estates and that decision has been appealed to the Zoning Board. For Mr. Rossi to maintain a position as a legal advocate and then as a legal advisor before the same board may not be appropriate.

Since Attorney Dougherty has already represented Mr. Rossi before the Ethics Commission regarding Rankin Estates and is very familiar with the matter, he is asking the Town Council to hire Mr. Dougherty once again to represent the town's interest before the Zoning Board. Mr. Rossi also asked the Council to hire Mr. Dougherty in regard to general issues that are surrounding the Rankin Estates application and Narragansett Improvement. With his own private practice, Mr. Rossi does not feel he has the time needed to devote to this litigation.

MOTION by Mr. Zwolenski, seconded by Mr. Leclerc, and voted unanimously on a roll call vote to hire Attorney Patrick Dougherty for Narragansett Improvement as well as general issues regarding the area surrounding Nipsachuck Swamp at a rate of \$150.00 per hour plus expenses.

REIMBURSEMENT OF LEGAL FEES FOR NARRAGANSETT IMPROVEMENT ETHICS COMPLAINT

A complaint was filed with the Ethics Commission by Narragansett Improvement Company against Assistant Town Solicitor Robert Rossi. It was successfully defended with the help of Attorney Patrick Dougherty. Costs were incurred by Mr. Rossi for the attorney and for an appraiser and he asked the Council for reimbursement of these fees.

Mr. Hadden added that these costs were incurred during the course

of Mr. Rossi's position with the town and he supported reimbursement.

Mr. Lowe questioned where the funds would be coming from in the budget. He stated there is nothing left in extraordinary litigation.

MOTION by Mr. Zwolenski, seconded by Mr. Leclerc, and voted unanimously on a roll call vote to reimburse the extraordinary litigation expenses to Robert Rossi in the amount of \$5,212.50 which includes \$750.00 for an expert appraisal.

MOTION by Mr. Zwolenski, seconded by Mr. Leclerc, and voted unanimously on a roll call vote that the funding will come from the Planning Board miscellaneous revenues account.

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AWARD OF BID RE: BRANCH RIVER REVITALIZATION CONSULTING SERVICES

MOTION by Mr. Leclerc, seconded by Mr. Keeley, and voted unanimously on a roll call vote to approve the contract for planning consulting services for Phase II of the Branch Village Revitalization District to Pare Corporation in the amount of \$26,000.00 per the recommendation of the Finance Director and to authorize the Town Administrator to execute the contract. Funds will come from a \$30,000.00 grant provided by the Rhode Island Division of Planning and the Blackstone River Valley National Heritage Corridor.

2ND READING ORDINANCE AMENDMENT RE: ESTABLISHING A MUNICIPAL GOVERNMENT SUBSIDY PROGRAM FOR LOW AND MODERATE INCOME HOUSING

MOTION by Mr. Lovett, seconded by Mr. Keeley, and voted unanimously on a roll call vote to approve for passage the following ordinance, amending Page 2(b) to read "... remain affordable for ninety-nine (99) years of or such other period...".

"It is ordained by the Town Council of the Town of North Smithfield as follows: That the Code of Ordinances, Chapter 10, entitled, LAND PLANNING AND GROWTH MANAGEMENT", and that there shall be added Article III, entitled, "Municipal Subsidy Program for Low and Moderate Income Housing", which shall read as follows: WHEREAS, The "Rhode Island Low and Moderate Income Housing Act" was established pursuant to Title 45, Chapter 53 of the General Laws of Rhode Island to provide opportunities for the establishment of low and moderate income housing within each City and Town throughout the State, and WHEREAS, It is the policy of the Town of North Smithfield to facilitate the development of all types of low and moderate income housing in accordance with the "Rhode Island Low and Moderate Income Housing Act" and in conformance with the North Smithfield Comprehensive Plan Five-year Update, and WHEREAS, The Town Council finds that the Rhode Island Low and Moderate Income Housing Act requires each and every city or Town throughout the State to provide low and moderate income housing in

excess of ten percent (10%) of the housing units reported for that City or Town in the census, and WHEREAS, The Town Council further finds that the Rhode Island Low and Moderate Income Housing Act authorizes each City or Town to provide opportunities for housing that qualifies as low and moderate income housing through the adoption of a Municipal Government Subsidy Program. NOW, THEREFORE, the Town Council of the Town of North Smithfield does hereby ordain as follows: Section 1. Findings of Fact. The Town Council finds that the Housing component of the Town of North Smithfield Comprehensive Community Plan Five-year Update that the town, as of 2007, has 6.85% affordable housing, leaving the town with a deficit of 128 affordable housing units. The Town Council further finds that the Housing and Affordable Housing component of the Comprehensive Community Plan Five-year Update for the Town of North Smithfield states that there are no local programs to assist moderate income households. The Town Council further finds that the Housing and Affordable Housing component of the Comprehensive Community Plan Five-year Update for the Town of North Smithfield establishes as one of its goals that the Town should provide a variety of housing that maintains the diversity of housing opportunities for moderate income households without ignoring the need for low income housing. The Town Council further finds that it is in the interest of the residents of the Town of North Smithfield to adopt a Municipal Government Subsidy Program for all major and minor subdivisions and major residential development. Section 2. Definitions. The following word, whenever used in this Ordinance,

unless a different meaning clearly appears from the context, have the following meanings: (a) "Affordable Housing" means residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief and insurance constitute no more than thirty percent (30%) of the gross household income for a moderate income household. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for household with eighty percent (80%) or less of area median income (AMI), adjusted for family size. Affordable housing shall include all types of year-round housing, including but not limited to, manufactured housing, housing originally constructed

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for workers and their families, accessory dwelling units, housing accepting rental vouchers and/or tenant based certificates under Section 8 of the United States Housing Act of 1937, as amended, and assisted living housing, where the sale or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing. (b) "Low or moderate income housing" means any

housing subsidized by the federal, state, or municipal government under any program to assist the construction or rehabilitation housing as low or moderate income housing, as defined in the applicable federal or state statute, or local ordinance whether built or operated by any public agency or any nonprofit organization, or by any limited equity housing cooperative or any private developer, that will remain affordable for ninety-nine (99) years or such other period that is either agreed to by the applicant and town but shall not be for a period of any less than thirty (30) years from initial occupancy through a land lease through a land lease and/or deed restriction. (c) “Moderate income household” means a single person, family, or unrelated persons living together whose adjusted gross income is more than eighty percent (80%) but less than one hundred and twenty percent (120%) of the area median income, adjusted for family size. (d) “Municipal government subsidy” means assistance that is made available through a city or town program sufficient to make housing affordable, as affordable is defined in this ordinance; such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance. Section 3. Eligibility. The provisions of this Ordinance shall apply to all major subdivisions and major residential land developments according to Rhode Island General Laws Chapter 45-53, titled Low and Moderate Income Housing, in the Town of North Smithfield. Section 4. Designation of Units. The Developer shall designate a minimum of twenty percent (20%) of the total number of

units in the land development project with the exception of the Slatersville Mill and High Rocks Condominium projects. This twenty percent (20%) can be a combination of low and moderate income housing. A minimum of ten percent (10%) of the total number of units in the Slatersville Mill must be affordable; eighty (80%) percent AMI or lower. A minimum of ten percent (10%) of the total number of units in High Rocks Condominium shall be affordable; of this 10% fifty (50%) percent must be at eighty (80%) percent AMI or lower, and fifty (50%) can up to 120% AMI. This ordinance applies to all subdivision activity and substantial rehabilitations and adaptive reuse that result in 6 or more units.

Section 5. Selection of Municipal Government Subsidy. The municipal government subsidy shall be a density bonus, where granted in accordance with the provisions of the Zoning Ordinance and/or internal subsidies and/or waiver of the building permit fee. The density bonus is not to exceed twenty five (25%) percent of the total project units.

Section 6. Length of Affordability. Low and moderate income housing must be designated as such for a period of ninety-nine (99) years or such other period that is either agreed to by the applicant and town but shall not be for a period of less than thirty (30) years from initial occupancy through a land lease or deed restriction. The affordability deed restriction must be renewed with each sale of the property. The right of first refusal shall lie with the Town of North Smithfield, and should the monitoring agent forego this right it would be offered to Rhode Island Housing a secondary right of refusal.

Section 7. Low Income Housing. The Planning Board of the Town of North Smithfield may require the inclusion of low

income housing units and/or provide a greater municipal subsidy when a development provides for low income housing. When considering the amount and/or type of subsidies granted by the Planning Board, they may consider, but not be limited to the following factors: any unique developments constraints including but not limited to project size, project location, and site size; economic feasibility and the amount of low income housing being proposed. The Town Planner may provide a recommendation regarding the municipal subsidy based upon the above considerations. SECTION 8. Monitoring and Compliance. Rhode Island Housing, or an approved monitoring agent as approved by Rhode Island Housing, its successors or assigns shall monitor the units designated as low and moderate income housing units to insure compliance with the affordability requirements of the land lease and/or deed restriction. Section 9. Housing Quality. The units

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created under the North Smithfield Municipal Subsidy Program must be physically consistent with the overall character of housing already established in the community. Every effort will be made to integrate affordable units into the surrounding community. Section 10. Tenure of Housing. This ordinance shall apply to both rental and ownership units, with rental units not to exceed 80% AMI. Section 11. Timing of Construction. Within a project low and moderate income units must be built simultaneously or prior to construction of the market rate units. Section 12. Allowed Income Limits. For the purpose of

creating ownership units a tiering of incomes is to be applied. Fifty (50%) percent of the affordable units in a project must be at eighty (80%) percent AMI or lower, and fifty (50%) percent can be negotiated with the planning board up to 120% AMI. Section 13. Occupancy of Units. The affordable units created under this ordinance must be the owner/renters primary residence. Section 14. Tax Assessments. The Town of North Smithfield will assess low and moderate income units based on the deed restricted price, not the comparable value of a non deed restricted property for the life of the affordable deed restriction unless some other arrangement has been met with the Town of North Smithfield. Section 15. Qualified Program. The Municipal Government Subsidy Program adopted by this Ordinance qualifies for the establishment of low and moderate income housing under the Rhode Island Low and Moderate Income Housing Act established pursuant to Title 45, Chapter 53 of the General Laws of Rhode Island. Section 16. Severability. If any provision of this Ordinance or of any rule, regulation or determination made there under, or the application thereof to any person, agency or circumstance is held invalid by a court of competent jurisdiction, the remainder of the Ordinance, rule, regulation, or determination and the application of such provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of this Ordinance shall not affect the validity of the remainder of the Ordinance.”

2ND READING ORDINANCE AMENDMENT RE: OUTDOOR WOOD BURNING FURNACES

MOTION by Mr. Leclerc, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote to approve the following ordinance for passage.

“It is ordained by the Town Council of the Town of North Smithfield as follows: That the Code of Ordinances, Chapter 8, entitled, “HEALTH AND SANITATION” be amended to add new ARTICLE V, entitled “OUTDOOR WOOD BURNING FURNACES” and new Sections 8-60 and following, as per below: Article V Outdoor Wood Burning Furnaces. Section 8-60 Preamble. The Town Council finds that the installation, use and operation of outdoor wood burning furnaces, also known as outdoor wood burners, (hereafter, “OWBs”), creates a potential and present threat to the health, safety, welfare and comfort of the community, in the form of a threat to the air quality and the peace and enjoyment of the community. While the Town Council wishes to continue the process of further examining and evaluating that risk as it applies to North Smithfield and its particular and unique topography and to provide for the protection of persons and property in accordance with Charter Art. IV, Sec. 8, the Town Council hereby establishes an ordinance to prevent the installation, use and operation of any new or additional units. Section 8-61. Moratorium on installation, use or operation of new units. 1. There is hereby, effective immediately as of the date of passage of this ordinance, a moratorium, prohibition and ban on the erection, installation, use of operation of OWBs not heretofore already installed, erected and in use and operation as of the date of passage of this ordinance. This

ordinance shall not impede or prevent the enforcement of, and hereby supports and enforces, the moratorium already in place by Resolution of the Town Council dated February 4, 2008, which shall remain effective and enforceable up to and through the time of and concurrent with this ordinance. 2. This moratorium shall remain in place for the period through and including August 1, 2008, or until such other time as shall be established by the town council by ordinance. 3. For any violation of this ordinance, there is hereby imposed a penalty of two hundred and fifty dollars (\$250.00) per violation, and each day shall be considered a separate violation. Usage, installation, operation or other violation of this ordinance may be enforced by the issuance of a cease and desist order issued by the building/zoning inspector and/or by confiscation or dismantling of the unit by or at the direction of the building/zoning inspector, all

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costs and expense of which (including but not limited to the time and expense of town officials or consultants or contractors or others in aid of enforcement, including attorneys fees) shall be charged to the violator and/or owner of the property upon which the violation occurs. In addition, this ordinance hereby authorizes and shall be enforceable by way of relief at law or equity for the cessation of use and for the confiscation or dismantling of any unit as may be available in any court of law in addition to all other remedies available to the town by law or under this ordinance. This ordinance shall take effect on the date of passage and in accordance with the Town

Charter.”

DESPER PROPERTY/QUAKER HIGHWAY

Mr. Hadden spoke with Mrs. Wowk, who asked that this be placed on the agenda, and she agreed to wait until the next meeting.

MOTION by Mr. Keeley, seconded by Mr. Lovett, and voted unanimously on an aye vote to table this matter to March 17, 2008.

EXECUTIVE SESSION

MOTION by Mr. Leclerc, seconded by Mr. Keeley, and voted unanimously on an aye vote to enter into executive session at 8:12 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective bargaining or litigation to discuss Narragansett Improvement Company and the North Smithfield Fire & Rescue Service contract.

MOTION by Mr. Lovett, seconded by Mr. Keeley, and voted unanimously on an aye vote to come out of executive session at 8:58 P.M. and to seal the minutes. No motions were made and no votes were taken.

MOTION by Mr. Leclerc, seconded by Mr. Keeley, and voted unanimously on an aye vote to adjourn at 8:59 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk